Sharing Information Across Systems

August 2004

Elizabeth Burmaster, State Superintendent
Department of Public Instruction
Madison, Wisconsin

This publication is available from:

Student Services/Prevention & Wellness Team
Wisconsin Department of Public Instruction
125 South Webster Street
P.O. Box 7841
Madison, WI 53707-7841
(608) 267-9238

This document is also available on World Wide Web:
http://www.dpi.state.wi.us./dpi/dlsea/sspw/pdf/sharing.pdf

August 2004

Table of Contents

Page

Introduction

Each day professionals who serve youth attempt to work closely with their community partners to meet the needs of the youth they share. This dedication requires being able to determine when information may be disclosed without violating a youth's and family's rights to privacy by having an understanding of the various state and federal laws that govern the sharing of information.

In general, confidential information can only be shared under three conditions:

1. a signed authorization that consents to the release of information,
2. a court order, or
3. authorization of statute.

This guide focuses on the third of these three conditions and is designed for educators, law enforcement personnel, juvenile justice and human service professionals, and community leaders who are interested in understanding the scope and parameters of the confidentiality laws that apply to the exchange of information between Wisconsin schools and other community systems. It identifies specific circumstances where statutes authorize one community system to share confidential information with another community system, e.g., schools, law enforcement, human services. Some of the statutes cited allow disclosure while others require it, typically for reasons related to health and/or safety. Each specific circumstance includes what information can (or must) be shared and with whom, the provisions for disclosure, examples, and authorizing statutes.

The body of this guide is divided into two primary sections. The first identifies circumstances authorized in statute under which public schools can share information with other community systems. The second section likewise identifies circumstances authorized in statute under which other community systems can share information with public schools.

Utilization of this document does not preclude the need to discuss the issues that information sharing raises. It is imperative that this guide is used as a resource to facilitate discussions within schools and with community partners, i.e., human service, law enforcement, and juvenile justice.

It has been said, statute guides policy and policy guides practice. The value of this document is enhanced when utilized in conjunction with local policy. Careful review should be made of existing policy to ascertain compliance with current law.

It is important to remember laws do change. This document can be used as a tool to guide practice, but it cannot replace personal review of the referenced statutes or the advice of legal counsel. As statutes change and become available electronically, the Department of Public Instruction will update the statute summary within this publication on the Student Services/Prevention and Wellness Team (SSPW) home page.

Finally, when releasing confidential information, the burden of proof falls on the person and organization disclosing the information to justify the release, not on the person or organization asking for the information.

Confidentiality from a School Perspective

In Wisconsin, passage of § 118.125 in 1974 and the enactment of the Family Educational Rights and Privacy Act (FERPA, 20 UCS 1232g) later in 1974, have had an enormous effect on how schools treat and think about school records (see Definitions for behavioral records, directory data, education records, patient health care records, personal notes, progress records, pupil physical health records, and pupil records). These laws have two major features: they limit who can see student records without a parent's consent, and they provide for a parent's right to see a child's school records. When a child turns 18, the rights that were previously available to the child's parents become available to the 18-year-old. Wisconsin law creates more rights for parents and children. In addition, Wisconsin schools that receive federal education funding must comply with the FERPA requirements.

The guiding principle for release of student records under FERPA is parental consent. The law broadly defines "educational records" and, with limited exceptions, prohibits a school from disclosing those records without written consent. The limited exceptions generally involve release to other school officials or for other education-related purposes.

Under FERPA, there is a narrow category of information called "directory information" that a school can release without written consent. Under federal law, directory information includes a student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, dates of attendance, photographs, and degrees and awards received, as well as the weight and height of members of athletic teams. Directory information is considered information that would not generally be considered harmful or an invasion of privacy if disclosed. A parent may object to release of any part or all of the directory information related to his/her child.

Under Wisconsin law, the parallel concept is "directory data." After the school has informed parents of what information it has designated as directory data, the parents must be given at least 14 days to inform the school it may not disclose this information without written consent.

More information is can be obtained in *Student Records and Confidentiality*, which is available at http://www.dpi.state.wi.us/dpi/dlsea/sspw/rrfsaa.html or contact the Student Services/Prevention and Wellness Team at (608) 266-8960.

As was mentioned in the introduction, one clear way to release information is in compliance with a court order. In addition to granting authority to law enforcement officials and fire inspectors to access school attendance records of students under investigation, Wisconsin statute specifically identifies the court order as an option for law enforcement and the fire inspectors to more broadly review pupil records, Wis. Stats. § 938.396 (1m), § 118.125(2)(cg) and (h), and § 165.55. In addition, three items for court access are also delineated in statute:

1. progress records, § 118.125 (2) (c);
2. names of students who have dropped out of school, § 118.125 (2)(c)2. and § 118.163(2m)(b); and
3. pupil records, § 118.125(2)(L), § 48.345(12)(b), § 938.34(7d)(b), § 938.396 (1m)(c) or (d), and § (938.78(2)(b)2., Stats. Under the statutes cited in this third item, the school must make a reasonable effort to notify the parent prior to disclosure.

The circumstances above are delineated here to acknowledge their existence in statute and prevent redundancy within this section.

Excerpted, in part, from *Confidentiality and Collaboration: Information Sharing in Interagency Efforts*

Reports of Suspected Child Abuse or Neglect

Context: Wisconsin Statutes Chapter 48 requires any mandated reporter (which includes all licensed school staff) who has reasonable cause to suspect that a child seen in the course of his/her professional duties has been abused or neglected or threatened with abuse or neglect to report that information to either the county department of social services or law enforcement.

Provisions for Disclosure: Under the Family Educational Rights and Privacy Act (FERPA), personally identifiable information may be disclosed if it is necessary to protect the health or safety of the student or other individuals [34 CFR, § 99.36 FERPA regulation]. Clearly, the health and/or safety of the student is a concern if a school employee is considering a report for suspected abuse or neglect. The county department and law enforcement agency are prohibited from revealing the source of the report, except under very limited circumstances [Wis. Stats. § 48.981(7)]. Anyone who reports suspected child abuse or neglect in good faith is immune from any civil or criminal liability. [§ 48.981(4)]

Example: A teacher suspects that a child's black eye may be the result of child abuse rather than running into a door. The teacher reports the child's injury to the county child protective services unit, including the awkwardness with which the child explained how the injury occurred.

Statutes: § 48.981(2-4), (7); 34 CFR, § 99.36 FERPA regulation

Attendance Records for Students Under Court Supervision

Context: Youth who are under court supervision commonly have school attendance as one of the conditions of their dispositional orders. Wisconsin law 1) specifies the court will notify the school district of what constitutes a violation of the school attendance condition, and 2) requires a school board to notify the county department responsible for supervising the youth of any violations. [§ 118.125(2)(cm), § 48.355(2)(b)7, § 938.355(2)(b)7]

Provisions for Disclosure: The school district must report this information within five days of the violation. There is no express authority to redisclose or not redisclose this information provided for in statute.

Example: A student under court supervision with the county social service department is required to attend school daily without absences. The student misses school for one day. The school notifies the student's social worker by the end of the week.

Statutes: § 118.125(2)(cm), § 48.355(2)(b)7, § 938.355(2)(b)7

Indigent Children

Context: When a public school becomes aware of a child in the school whose parent, guardian, or other person having control, charge or custody of the child does not have sufficient means to furnish the child with food or clothing necessary to enable the child to attend school, the school is to report the name and address of the child to the county department of social or human services. There is no uniform standard for determining indigency or "sufficient means" under this provision. School district boards should adopt a policy with a standard and a method of applying it uniformly.

Provisions for Disclosure: Out of courtesy to families, school boards should consider having the policy require a personal notification to the parents that the school is about to give their name to county officials.

Example: An economically disadvantaged family loses its home to a fire. They have no renter's insurance and lose everything. The school organizes a drive for donations of clothing and household items. The school contacts the parents about the required report to the county and ensure them that this notification is just to help them access services for which they may be eligible, i.e., the report is not for suspected neglect.

Statutes: § 118.17, **§** 46.215, **§** 46.22, **§** 46.23

Students without Parents or Guardians

Context: When a public school becomes aware that a pupil is without a parent or guardian, the school is to notify the county department of social or human services. This requirement does not apply to any pupil who has a legal custodian or is cared for by a kinship care relative, as defined in state statute.

Provisions for Disclosure: Out of courtesy to the student, school boards should consider having their policy require a personal notification to the student that the school is about to give his/her name to county officials.

Example: The school becomes aware that a 16-year old high school student is now living with a friend's family. The student's father has left the community and his whereabouts cannot be determined. The mother is deceased. The school contacts the parents of the student's friend and learns that they have not been awarded custody or guardianship. As a result, the school discusses the notification requirement with the student and then contacts the county department of social services about the student's circumstances.

Statutes: § 118.175, § 48.02(11), § 938.02(11), § 45.57(3m)(a)2.

Referral of Special Education Students Who May Require Mental Health or AODA Services

Context: State statute requires each school district to report, on or before August 15th, to the appropriate county department(s) under s. 51.42 and 51.437 the names of youth who 1) reside in the school district, 2) are at least 16 years old, 3) are enrolled in or are eligible to be enrolled in a special education program, 4) are not expected to be enrolled in an educational program in two years, and 5)

may require alcohol or other drug or mental health services described under s. 51.42 or 51.437(1). This referral does not in any way affect a school district's responsibility to provide services to a student with a disability. Before filing this report, consent must be obtained. A school district may wish to consult with its respective 51.42 Board to help determine what local standard will be established for referral under this statute.

Provisions for Disclosure: Information shared may not be based upon confidential pupil records without consent or court order. While it is possible to read this specific directive of conveying confidential information from the school district to the county mental health or drug treatment facility as an additional exception to state law pupil record confidentiality, such information does not fall within one of the thirteen enumerated exceptions in FERPA for permitted (not mandated) disclosure without the parent or pupil's consent under federal law. Districts must comply with both state and federal law. Accordingly, it is suggested that school districts, after identifying the students who fit the profile in the statute and the standard for referral established in conjunction with the local 51.42 Board, contact the parents of the 16-year-olds identified to obtain informed consent. The contact should explain the purpose of the statute and the advance referral. If the school district's belief that a student may require alcohol or other drug services is based upon the self-disclosure of the student, an additional consideration is another state law that requires pupil services and other staff designated by the school board to keep confidential information received from a pupil that the pupil or another pupil is using or is experiencing problems resulting from the use of alcohol or other drugs. This law allows disclosure only with the student's written permission. [There are two other exceptions, not applicable here, which allow or require disclosure without the pupil's consent.] The problems previously disclosed by the student may or may not reach the standard determined by the school district necessitating a referral to the county for alcohol or other drug or mental health services. This state law is consistent with FERPA and because these laws calling for consent are more restrictive or protective of pupil rights, they control. Reading the three laws together, the report to the county can only include the names of pupils for whom proper consent has been obtained. The district's written pupil confidentiality policy should be clear on this point and decisions applying the policy should be noted in the pupil's record as they occur.

Example: A school district annually convenes a work group in early August made up of administrators and special education staff to determine which students meet the standard for referral under s. 115.812(2). The work group examines a current enrollment list of special education students who will be at least 16 years old as of August 15th. Students who qualified for special education but are not enrolled, e.g., dropouts, parents declined special education placement, and are at least 16 years old are also noted. Any of these youth who are anticipated not to be enrolled in an educational program in two years and who meet the previously established standard for referral based upon consultation with the county 51.42 Board agency are identified. A pupil services staff member from the high school contacts the parents personally to explain the reason for referral and that no information can be shared without the parents' informed consent. A letter summarizing this same information is also delivered to the parents of the identified students. The school notes the parents' decision in the students' respective records and forwards directory data, i.e., student name, address, and telephone number, as well as the parents' names and contact information only if the parents have provided written permission for disclosure with the county 51.42 Board agency.

Statute: § 115.812(2), § 118.126, 20 US § 1232g(b)(1), 34 CFR § 99.31(a)

School Attendance Enforcement

Context: Wisconsin law allows a school attendance officer of a school district to file information with the court on any child who is habitually truant, if the truancy continues once the school has provided services specified in statute intended to alleviate the truancy. In addition, a habitually truant student may be referred to a teen court program, if one is available. Habitual truant means a pupil who is absent from school without an acceptable excuse for part or all of five or more days on which school is held during a school semester.

Provisions for Disclosure: Prior to filing information with the court of jurisdiction or the teen court, the school attendance officer must provide evidence that all of the following were completed or were not required to be completed:

1. Met with the child's parent or guardian to discuss the child's truancy or attempted to meet with the child's parent or guardian and received no response or were refused.
2. Provided an opportunity for educational counseling to the child to determine whether a change in the child's curriculum would resolve the child's truancy and have considered curriculum modifications under s. 118.15 (1) (d).
3. Evaluated the child to determine whether learning problems may be a cause of the child's truancy and, if so, have taken steps to overcome the learning problems, except that the child need not be evaluated if tests administered to the child within the previous year indicate that the child is performing at his or her grade level.
4. Conducted an evaluation to determine whether social problems may be a cause of the child's truancy and, if so, have taken appropriate action or made appropriate referrals.

In addition to the four conditions listed above, in order to refer a habitually truant child to a teen court, the school attendance officer must 1) be authorized to do so by the chief judge of the judicial administrative district that approved the teen court, 2) believe that participation in the teen court will likely benefit the child and the community, 3) obtain the consent of the child and the child's parent, guardian and legal custodian for participation in the teen court, and 4) determine the child has not successfully completed participation in a teen court program during the two years before the date on which the school attendance officer received the evidence referred to in this and the previous paragraph.

Circumstances which could specifically allow disclosure of pupil records as part of this referral are shared in the section on Disclosure of Pupil Records to Provide Services.

Example #1: A middle school student new to the school district has missed part or all of several days without an excuse. The student's mother is very concerned about the absences and has spoken to the school attendance officer on numerous occasions, but monitoring her child's attendance has been challenging because of the mother's daily work schedule, i.e., 7:00 AM – 3:00 PM, Monday – Friday. The student has avoided opportunities for educational and social-emotional counseling. The building consultation team has reviewed standardized achievement test results available on this student and gathered information from the student's teachers regarding academic functioning. A variety of instructional modifications have been suggested and attempted with little impact on improving attendance. School staff have not observed any social difficulties, but have noticed this student has chosen friends that also have some unexcused absences. The mother is concerned about possible use of illicit drugs and is scheduling an appointment for an assessment at the local

adolescent health center. The school attendance officer talks to the mother about the county's teen court and both agree that this experience might help improve the student's attendance. The school attendance officer makes the referral, documenting that all necessary preliminary conditions in the law have been completed.

Example #2: A high school freshman student attends classes irregularly, i.e., has frequently missed 1-2 class periods daily without an allowable excuse. The parents have been largely unresponsive to the school's attempts to work with them on this matter, including not being available for a home visit. An IEP Team evaluation late last school year found no educational disabilities or social difficulties, but did result in enrollment this year in an alternative program within the high school in an attempt to provide a more flexible instructional environment for the student. The school attendance officer files a report with the court, documenting that all necessary preliminary conditions in the law have been completed or attempted.

Statutes: Wis. Stat. 118.16(5), (6)

Reports of Suspected Child Abuse or Neglect

See *Reports of Suspected Child Abuse and Neglect.*

Attendance Records & Directory Data as Part of Formal Investigations

Context #1: Wisconsin law requires school districts to share the attendance record of any student that is the subject of an investigation for truancy, arson or a criminal or delinquent act. Specifically, the attendance record must be provided 1) to law enforcement officials for investigations of truancy or a criminal or delinquent act, and 2) to a fire investigator for investigations of arson. [Wis. Stats. § 118.125(2)(cg), (ch)]

Provisions for Disclosure: Prior to disclosure of the attendance record, the law enforcement agency or fire investigator must certify in writing that the student is under investigation and that the information will not be further disclosed unless specifically allowed by law. The school district must notify the parents or legal guardian of the disclosure as soon as is practicable after the disclosure.

Example: A police officer is investigating a daytime burglary and wants to know if one of the suspects was in school that day. He provides the high school with written notification of the student's involvement in the investigation. The high school office staff checks the attendance record and provides the police officer with written copy of the student's attendance record. The school staff telephones the student's mother at work to notify her of the release of information and the purpose.

Statutes: § 118.125(2)(cg), (ch); § 938.396(1-1x)

Context #2: Wisconsin law requires a school district to provide any directory data to a law enforcement official, the district attorney, city attorney, county corporation counsel, municipal court or circuit court relating to any student for the purpose of enforcing the student's school attendance, investigating alleged criminal or delinquent activity by the student, or responding to a health or safety emergency [§ 118.125(2)(j) 3]. Directory data may include the student's name,

address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, photographs, degrees and awards received and the name of the school most recently attended by the student. Please note that dates of attendance refers to the period of time over which a student was enrolled in a school, not the specific days that a student attended school or was absent from school, which is a progress record. [s. 118.125(1)(c)] Within its local policy, a school district may limit what it chooses to classify as directory data, beyond the statutory definition. For instance, for reasons of safety and privacy, some school districts have chosen not to include home addresses and phone numbers in their local definitions of directory data. More information about student records is available in *Student Records and Confidentiality* at http://www.dpi.state.wi.us/dpi/dlsea/sspw/tadocs.html.

Provisions for Disclosure: The school district cannot release directory data without having first 1) notified the parent as to what information it has designated as directory data for the student, and 2) allowing the parent at least 14 days to notify the school district the information may not be released without the parent's prior consent. There is no provision on the disclosure by these various public agencies under this section, but each agency may be limited by restrictions on confidentiality in its own statutes and policies. FERPA requires a record be kept by the school district of all disclosures.

Example: A school district routinely notifies all parents at the beginning of each school year of 1) what school records it has designated as directory information and 2) the school district's authority to disclose this information upon request unless the parent notifies the school district within 14 days not to disclose the information without prior consent. The local police officer requests photographs of three students under investigation for a series of daytime robberies in the neighborhood. The school checks to make sure none of the parents of the three students notified the school not to share this information prior to giving the photographs to the police officer.

Statute: § 118.125(2)(j)3; 34 CFR, § 99.36 FERPA regulation

Referral of Information Related to Crimes Committed by Students with Disabilities to Law Enforcement and Judicial Authorities

Context: Neither federal nor state law require a school district to provide otherwise confidential pupil record information to local law enforcement when a pupil commits a crime. However, IDEA regulations state that if a school district chooses to report a crime committed by a child with a disability to law enforcement, the school district must send copies of the special education and disciplinary records of the child for consideration by the law enforcement agency receiving the report. However, the school district is limited by FERPA, i.e., it may only transmit copies of records to the extent allowed by FERPA. Further, current Wisconsin pupil records law does not allow a school district to disclose pupil records, other than directory data, to law enforcement in these circumstances. Disclosure is only allowed pursuant to a court order or informed consent.

Provisions for Disclosure: While it is clear a school district may not unilaterally share special education and discipline records of a pupil with a disability who is suspected of committing a crime with law enforcement authorities, the school district must attempt to comply with IDEA regulations by contacting the parents to ask for informed consent to release these records. Absent such consent, a court order or other exception, nothing other than directory data may be disclosed.

Example: A high school student with a disability is found in possession of illicit drugs and is suspected of having intent to deliver. The police-school liaison is contacted who makes an arrest. The building principal contacts one of the parents at work and notifies her of the incident and the federal requirement to share copies of the student's special education and discipline records with law enforcement, but only if the parent consents. After some discussion, the parent tells the principal she wishes to discuss the decision with her husband and their attorney. Two days later the mother comes to school and signs the appropriate release form to have part of her child's special education records released. Specifically, she consents to have the portion of the record released that documents the student's immaturity, poor impulse control, and lack of understanding of the relationship between personal actions and consequences. Permission is not given to share any other records, including discipline records.

Statute: § 118.125(2)(c), (e), (j)3., and (L), 938.396(1m), (c) and (d) and 938.78(2)(b)2., 20 USC § 1232g(b)(1)(E)(ii)(II), 34 CFR § 99.31(a)(5)(i)(B), (10) and (11), 99.36(a), 99.37, and 20 USC s. 1415(k)(9), 34 CFR § 300.529

Patient Health Care Records

Context: Wisconsin law allows health care professionals, both community- and school-based, to share information from patient health care records with others under the following circumstances:

1. The person is rendering health care assistance to the student.
2. The person is being consulted regarding the health of the student and the consultation is necessary to make appropriate decisions about the student.
3. The life or health of the student appears to be in danger and the information contained in the patient health care records may aid the person in rendering assistance.
4. The person prepares or stores health care records.
5. To the extent that the records are needed for billing, collection or payment of claims.
6. The information is needed to carry out specific duties relating to identification, evaluation, placement, and provision of a free, appropriate public education to a child with a disability [Wis. Stats. § 146.82(2)(a)2, 3].

Health care providers are defined in § 146.81(1); within schools they include nurses licensed under Chapter 441; audiologists, and speech and language clinicians licensed under Chapter 459; psychologists licensed under Chapter 455; and both social workers and counselors licensed under Chapter 457. A school counselor, school social worker, school psychologist, or speech/language clinician holding only DPI certification does not meet the statutory definition of a health care provider.

Provisions for Disclosure: Under #2 above, no release of actual records would be made, and in general, a student's name would not be disclosed. Under #4 and #6 above, the disclosure would be to school employees who need the information to perform their respective jobs. Under #5 above, the disclosure would be to Medicaid or other third party payers. Patient health care records must be maintained separately from other school records with monitored and limited access. Redisclosure is not authorized except under specific circumstances cited in § 146.82(2)(b) and (c). For each release of patient health care records, the health care provider is to record the name of the person

and agency to which the records were released, the date and time of the release and the identification of the records released.

Example #1: An ambulance is called to school following a serious accident. The school nurse informs the emergency medical technician the injured student has a history of epilepsy and asthma.

Example #2: A school nurse seeks out and receives clinical consultation from a pediatric neurologist regarding symptoms being exhibited by a medically fragile student with a past history of seizures.

Example #3: A secretary for the school district completes the clerical activities, e.g., typing, filing, etc., for the school nurse.

Example #4: The school district pupil services secretary completes and forwards the necessary documentation in order to seek reimbursement from Medicaid for eligible services provided.

Example #5: The school nurse tells a student's teacher, aide and bus driver that the student is a diabetic and describes what symptoms to watch for and what action to take to ensure the student's safety.

Statutes: § 146.81(1), § 146.82-84

Lead Screening Records

Context: Wisconsin law requires that any person screening a child under age six (6) for lead exposure and any nurse or health officer who has verified information of an individual with a positive lead test, regardless of the person's age, shall report the findings to pubic health officials for the purposes of carrying out the activities in § 254.11 through § 254.178. These activities include school-based programs serving children under 6 years of age, including kindergarten, special education and related services for children with disabilities, as defined in § 115.76 (5), and other early childhood programs.

Provisions for Disclosure: Results of general, i.e., all students, lead screening is a progress record and can include the student's name, address, date of birth and a positive or negative result; this information is subject to release under the noted statutes. There is no express authority to redisclose or not redisclose this information provided for in statute. Any additional health-related information regarding the lead screening results would be considered a patient health care record and remain confidential.

Example #1: A school completes an annual lead screening for all entering kindergarten students and determines a child tested positive for lead. The school nurse reports the child's name and the positive test result, as required, within 48 hours to the local health department.

Example #2: The school nurse reviews records from a 5th grade student's physical exam and sees a recent blood test result indicating lead exposure. The physician's office staff that conducted the test are uncertain if the physician has reported the findings. The school nurse calls the local health department to report the positive test.

Statutes: §118.125(1)(a), (1)(c) and (1)(cm)

Immunization Records

Context: Wisconsin law allows schools, upon request, to release information from immunization records to the Department of Health and Family Services to determine if students have been immunized consistent with §252.04. [§ 118.125(2)(h), § 252.04]

Provisions for Disclosure: The name of the student, immunizations(s) and date(s) given, and if the student has a waiver of immunization are all part of a student's progress records and subject to release under the noted statutes. There is no express authority to redisclose this information provided for in statute. Expanded information about the reason for a medical waiver and communication among health care providers regarding immunization status is part of the student's patient health care record and is subject to the restrictions of § 146.82.

Example: The Department of Health and Family Services conducts a random audit of immunization compliance. The agency requests the school district's immunization records. The school district shares the names of the students, immunizations received by each student, and the dates given.

Statutes: § 118.125(2)(h), § 252.04

Communicable Disease Records

Context: Any person licensed under Chapters 441 or 448 must report the suspicion of a communicable disease, including the individual's name, sex, age, residence, and the disease in question to the local health officer.

Provisions for Disclosure: Reports and records of communicable disease must be treated as patient health care records and are confidential. See Provisions for Disclosure under Patient Health Care Records section.

Example: A physical therapist working with an early childhood student notices a pinpoint red rash on the student's abdomen. The child is warm to the touch, and has watery eyes. The school nurse is not available, so the therapist calls the local health department for advice and referral.

Statute: § 252.05(1)

Privileged Communication Related to Alcohol and Other Drug Issues for Designated School Staff

Context: Wisconsin law prohibits a school psychologist, counselor, social worker, nurse, or any teacher or administrator who is designated by the school board to engage in alcohol and other drug program activities from sharing information received from a student that the student or another student is using or experiencing problems resulting from the use of alcohol or other drugs. [§ 118.126]

Provisions for Disclosure: This information may be disclosed if the student consents in writing; there is a reason to believe there is serious and imminent danger to the health, safety or life of any person; or the information is required to be reported as suspected child abuse or neglect. In order to

disclose information related to serious and imminent danger, it is necessary the disclosure will alleviate the danger and no more information may be disclosed than is necessary to alleviate the danger. It is not specified in statute with whom this information may be shared, but it is presumably only those people who have the ability and/or authority to alleviate the danger.

Example: Through the course of counseling, a school counselor learns that a student regularly drinks to intoxication and serves as a "chauffeur" for her circle of friends while she is in that state. The school counselor later learns at the end of the school day on a Friday that this group plans to engage in this activity that night. The counselor makes the decision to contact the parents of the students so they can take steps to prevent their children from driving drunk or riding with a drinking driver.

Statute: § 118.126

Privileged Communication Related to Health Care Services

Context: An exception to Wisconsin law that requires licensed school staff to report suspected cases of child abuse and neglect, i.e., sexual intercourse or sexual contact involving a child, is intended to allow children to obtain confidential health care services. A physician, as defined under § 448.01(5), a physician assistant, as defined under § 448.01(6), or a nurse holding a certificate of registration under § 441.06(1) or a license under § 441.10(3), who provides any health care service to a child is not required to report as suspected or threatened abuse, sexual intercourse or sexual contact involving a child. In addition, any person who obtains information about a child who is receiving or has received health care services from a health care provider is also not required to report as suspected or threatened abuse, sexual intercourse or sexual contact involving a child.

Provisions for Disclosure: Sexual intercourse or sexual contact involving a child *must still be reported* as suspected or threatened abuse by a health care provider or any person required to report under Wisconsin law who obtains information about a child who is receiving or has received health care services if any of the following circumstances may be true:

- The sexual activity occurred or is likely to occur with a caregiver.
- The child is incapable of understanding the consequences of his or her actions or the nature of sexual contact or sexual intercourse; this lack of understanding may be due to mental illness or deficiency, age or immaturity.
- The child was not able to communicate unwillingness during the sexual intercourse or contact.
- The other participant in the sexual contact was or is exploiting the child.
- The health care provider (or person who has obtained information about a child who is or has received health care services) has some doubt as to the voluntariness of the child's participation in the sexual intercourse or contact.

Example #1: A high school sophomore, age 15, asks the school nurse if a symptom she is experiencing might be from a sexually transmitted disease. The girl states that she and her 16-year old boyfriend willingly had intercourse. The nurse provides information and referral to a health department clinic, documents the visit in the student's patient health care record, but does not report the information further.

Example #2: A high school sophomore, age 15, approaches the school social worker because she just received a positive pregnancy test result from a medical clinic. The student states she and her 20-year old boyfriend are in love and are going to get married. Even though the student has accessed health care services, the school social worker informs the student of the need to report the situation to the county child protective services unit, because of the possibility of exploitation and/or manipulation by a sexual partner who is significantly older than her, i.e., 5 years.

Statute: § 48.981(2) and (2m)

Note: The circumstances under which a mandated reporter must or must not report a sexually active adolescent for possible sexual abuse are complex. More information may be obtained from *Reporting Requirements for Sexually Active Adolescents*; see the section on Resources for information on how to obtain a copy.

Armed Forces Recruiter Access to Students and Student Recruiting Information

Context: The federal Elementary and Secondary Education Act (ESEA) requires schools receiving assistance through ESEA to provide, upon request from military recruiters or an institution of higher education, access to secondary school students' names, addresses, and telephone listings. The same access to students, e.g., career days, recruiting, etc., is to be provided to military recruiters as is provided to post secondary educational institutions or to prospective employers of those students.

Provisions for Disclosure: A secondary school student or the parent of a secondary school student may request that the student's name, address, and telephone listing not be released without prior written consent, and the school must comply with the request.

Example: A high school includes in its student handbook a summary of the requirement the school disclose students' names, addresses and telephone listings upon request to military recruiters and representatives from institutions of higher education, unless the student or the student's parent notifies the school not to share this information. The student handbook is given to all students and their parents at the beginning of each school year.

Statute: Sec. 9528, ESEA

Health & Safety Emergencies

Context: Wisconsin law allows a school district to disclose pupil records to appropriate parties in connection with an emergency, if knowledge of the information is necessary to protect the health or safety of any individual.

Provisions for Disclosure: A similar provision in the Family Educational Rights and Privacy Act (FERPA) requires this language to be construed narrowly. The statute does not define "emergency," but the term could be considered to mean immediate intervention is or may be necessary to protect the health or safety of an individual. "Appropriate parties" would presumably be limited to only those individuals or organizations that have the capacity to protect the person(s) whose health or safety is in jeopardy. Only that information from pupil records that is necessary to

protect the health and safety of the individual may be disclosed. The term "individual" could apply to any person, i.e., not just a student or school staff member.

Example #1: Law enforcement authorities have been notified that an unidentified male adult has taken control of a 4th grade classroom and is armed with a knife. Before the police take steps to secure the classroom, the building principal notifies the officers that there is a cognitively delayed child in the classroom that may not comprehend instructions they give, shares the child's name, what he looks like, and where the child sits in the classroom.

Example #2: At the end of the school day, a student reports to one of the high school assistant principals that he overheard a conversation in which another student states the intent to kill a third student later that night. The threatening student has a history of severe, physical fights and the assistant principal believes he may be capable of carrying out this threat. Because both the potential assailant and potential victim have already left school, the assistant principal notifies the threatened student's parents and local law enforcement authorities of the threat. He discloses to the law enforcement officer the threatening student's history of excessive violence, in order to convey the appropriate level of concern.

Statutes: s. 118.125(2)(p); 34 CFR99.31 & 36; 20 U.S.C. 1232g(a)(5)(A), (b)(1), (b)(2), (b)(4)(B), (f) and (h)

Disclosure of Pupil Records to Provide Services

Context: A school district may disclose pupil records to a law enforcement agency, district attorney, city attorney, corporation counsel, county social services agency, child welfare or juvenile justice intake worker, court of record, municipal court, private school or another school district, if: 1) a school district has entered into an interagency agreement, 2) the organization or individual requesting the pupil records is party to that interagency agreement, 3) the purpose of the request is to provide services before adjudication, and 4) the requesting party certifies in writing that the records will not be redisclosed to anyone except as permitted under s. 118.125(2)(n).

Provisions for Disclosure: The interagency agreement would presumably be signed by the authorized representatives of any school district(s) and agencies that are party to that agreement. The statute does not define "services" and this term could be construed broadly. One could prudently interpret "before adjudication" as commencing with an investigation of a particular event and concluding with adjudication. That is, pupil records could be shared under this provision prior to a minor being adjudicated delinquent or in need of protection and services, but not afterwards. Any post-adjudication disclosures would have to be authorized by another statute, informed consent or court order. The disclosure of pupil records should be limited to student(s) identified as being under investigation. That is, broad requests for pupil records on multiple students without specifying names, e.g., provision of a list of students not in school on a specific date, would likely not be considered to be authorized by this statute.

Example #1: A student has been arrested for shoplifting at a local department store. The investigator contacts the school's assistant principal to discuss her educational and behavioral performance in school as part of determining the student's suitability for a community service diversion program.

Example #2: A middle school student has been referred by the school to the juvenile court for habitual truancy. The court requests specific information regarding circumstances surrounding the truancy, other absences that may have been excused, and any disciplinary referrals or issues as part of determining what services or interventions may be most appropriate.

Example #3: The county child protective services (CPS) unit has received a report of suspected neglect of a 2nd grade child from a community source. The CPS investigator contacts the school and wants to 1) interview any staff members who have regular contact with the students, and 2) examine the child's pupil records as part of the investigation. The building principal identifies the appropriate staff members, i.e., teachers, aides, kitchen and office staff, and provides a small conference room for the interviews. Because many of the contents of the pupil records are not germane to the investigation, the building principal directs the school social worker to meet with the CPS investigator and answer all questions relevant to the investigation, using the pupil records as a reference.

Note: In all 3 examples, the person requesting pupil records would have to provide written notification to the school that the information would not be redisclosed.

Statutes: s. 118.125(2)(n)

Confidentiality from a Child Welfare or Social Service Perspective

Child welfare and social service records contain some of the most private and personal information the government can maintain on a family. Federal and state laws generally regulate access to child welfare records, making the records confidential and restricting release without the client's written consent. The Federal Child Abuse and Prevention and Treatment Act (42 USC § 5101 *et seq*) seeks to protect the rights of the child and of the child's parents or guardians by making federal funding contingent on a state's providing "by statute that all records concerning reports and reports of child abuse and neglect are confidential and that their unauthorized disclosure is a criminal offense." A state may, however, "authorize by statute disclosure to any or all" of certain specifically named persons and agencies "under limitation and procedures the state determines" [45 CFR, § 1340.14(i)]. In Wisconsin the exceptions listed under Wis. Stats. § 48.981 (7), primarily include persons involved in investigations or service delivery related to abuse and neglect. The regulations do not provide for access to the general public, the parent's employer or others without a valid need for information in order to assist the child or family. Additional persons or agencies may receive access with the client's written consent or with a court order.

In addition to the rights of the child and family, the confidentiality rights of the individual making a good faith report of suspected child abuse or neglect must be protected. Unless the reporter consents to release, his or her name is to be kept confidential from everyone, including the child and family who are the subjects of the report.

Excerpted, in part, from *Confidentiality and Collaboration: Information Sharing in Interagency Efforts*

Information Regarding a Child in the Care or Legal Custody of the County or a Licensed Foster Care Agency

Context: Wisconsin law allows the confidential transfer of information regarding a child in the care or legal custody of the county or a licensed child welfare agency with another child welfare agency, the child's school, a law enforcement agency, and other organizations. [§ 48.78(2)(b), § 938.78(2)(b)1.] However, § 118.125 prohibits reciprocity in the exchange of information because it does not authorize the sharing of school records with the county department.

Provisions for Disclosure: The school must keep the information received confidential as required under § 118.125(1)(d) and (2).

Example: A county social worker talks with the teacher regarding a youth under supervision with the county department. The social worker shares the youth's case plan and progress, but the teacher is not able to respond to the social worker's inquiry about the student's progress in special education without informed consent.

Statutes: § 48.78(2)(b), § 938.78(2)(b)1, § 118.125(1)(d) and (2)

Actions Taken Following a Child Abuse/Neglect Investigation

Context: Wisconsin law requires professional school staff to report suspected child abuse or neglect. Likewise, Wisconsin law requires the county social service agency to inform the mandated reporter of what action, if any, was taken to protect the health and welfare of the child who was reported for suspected child abuse or neglect. This notification to the reporter must be made within 60 days after the county receives the report from the school professional [§ 48.981(3)(c)6.].

Provisions for Disclosure: Actual disclosure of whether the report was substantiated or not is not permitted. § 48.981(7)(e) prohibits redisclosure of confidential information by any person or agency authorized to receive it.

Example #1: A classroom teacher reports suspected physical abuse to the county child protective services unit. Subsequent to the investigation, the teacher is informed the family has been offered services.

Example #2: A school counselor reports suspected abuse to the county child protective services unit. Subsequent to the investigation, the school counselor is informed the child was removed from the home and both a CHIPS petition and criminal charges will be filed.

Statute: § 48.981(3)(c)6. and (7)(e)

Reports and Records Related to Child Abuse and Neglect

Context: Wisconsin law allows a county to recognize a multidisciplinary child abuse and neglect team. Team members may include educators, social service and mental health professionals, law enforcement and medical personnel. A team may be established for prevention and/or treatment of

child abuse and neglect or to address a particular case or investigation. Reports and records governed by Wisconsin Chapter 48 may be shared with the members of this team; the county department of social or human services maintains this information. [§ 48.981(7)(a)6m.]

Provisions for Disclosure: Presumably, the multidisciplinary team would have to be recognized by the county prior to any disclosure of records or reports and only those records and reports specifically related to the task(s) of the multidisciplinary team. Redisclosure is not authorized, except under specific circumstances in § 48.981(7)(a) and (e).

Example #1: The county establishes a team to meet monthly to discuss cases of suspected child abuse and neglect and improve the child protective services system, i.e., communication, reporting, and investigations, services for families, etc. The team includes representatives from schools, law enforcement, county child protective services, mental health, hospitals and medical clinics.

Example #2: A number of students are suspected of having been sexually abused by a teacher's aide. A team is formed to look into the situation, including the building principal, law enforcement, and child protective services staff.

Statute: § 48.981(7)(a)6m. and (e)

Referral of Children to be Placed in Residential Care Centers (formerly Child Caring Institutions)

Context: When 1) a county department of social services recommends to a court or 2) the State Department of Health and Family Services (DHFS) or the State Department of Corrections (DOC) anticipates a child will be placed in a residential care center (RCC), under state law the agency must notify the responsible school district. For students currently receiving educational services through a school district, the responsible school district is the school district in which the student resides. For a child or youth presently in a facility operated by DHFS or DOC, the responsible school district is the school district in which the RCC (where the child or youth will be placed) is located. Dependent upon the child's situation, i.e., the child is a child with a disability, the child does not have a disability, or the school district has reason to believe the child may be a child with a disability, the school district must follow one of the processes explained below. For a child with a disability, the responsible school district must appoint an IEP Team to review, and if necessary, revise the child's IEP and develop a placement offer. The responsible school district must consider the child's treatment and security needs in deciding the educational placement. The educational placement may be full-time in the RCC, in the responsible school district, in another school district, or part-time in the RCC and a school district, dependent upon the child's educational needs, including treatment and security needs, as determined by the IEP Team. Administrative rule requires RCCs to have procedures for 1) referring students to public schools, 2) identifying schools responsible for resident education, and 3) complying with state education statutes relating to RCCs and cooperating with the Department of Public Instruction (DPI) in the provision of regular and special education.

Provisions for Disclosure: Disclosure is limited to education records, i.e., treatment records are not included under this statutory provision. When a local education agency (LEA) receives a transfer student and the LEA does not receive the student's education records, the new LEA must request the records from the LEA the student last attended. Local educational agencies include

DHFS and DOC. The LEA the student last attended must transfer the records to the new LEA within five working days of receipt of the notice.

Example #1: The Child Has a Disability—DHFS plans to place a child currently served in one of its facilities in a RCC and notifies the school district in which the RCC is located. The school district makes a written request to the DHFS facility for the youth's education records, consults with the state agency and appoints an IEP Team to review, and if necessary revise, the child's IEP and to develop an educational placement offer.

Example #2: The Child Does Not Have a Disability—A county department of social services is recommending to a juvenile court that a child not then in a DOC or DHFS facility, be placed in a RCC and notifies the school district in which the child resides. The school appoints staff to review the child's education records (and determines there is no reason to believe the student may have a disability) and develops a status report for the child and sends it to the county agency within 30 days of the notification.

Example #3: The School Has Reason to Believe that the Child Has a Disability—DOC plans to place a youth currently placed in one of its facilities in a RCC and notifies the school district in which the RCC is located. The school district makes a written request to the DOC facility for the youth's education records and, following a review of the records, believes the youth may have a disability. The school appoints an IEP Team and invites appropriately licensed staff from the RCC to participate in the evaluation. The IEP Team finds that the child is eligible for special education, consults with the DOC representatives, and then develops an IEP and an education placement offer.

Statutes and Codes: § 115.81(1)(b) and (3); § 118.125 (4); HFS 52.41(1)(b); Wis. Admin. Code PI 11.07(2)

Notification of New Foster Homes

Context: When the Department of Health and Family Services, a county department of social services, or a child welfare agency issues a license to operate a foster home in a school district, the licensing agency is to notify the clerk of the school district.

Provisions for Disclosure: Although the release of this information is to be made to the clerk of the school district, the responsibility to receive this information may be delegated to one or more school district employees.

Example: The county department of social services issues a license for a new foster home and contacts the school district administration office to relate the address and the number and age range of the children eligible to be placed in the foster home.

Statute: § 48.62(3)

Notification of Children Placed in Foster and Group Homes

Context: When an agency places a school-age child in a foster home or a group home in a school district, the agency is to notify the clerk of the school district. The agency may choose to assist the

school district in the enrollment of the child in the school district, e.g., facilitate the transfer of the child's school records.

Provisions for Disclosure: Although the release of this information is to be made to the clerk of the school district, the responsibility to receive this information may be delegated to one or more school district employees.

Example: A licensed child welfare agency places a 7th grade student in a group home in a school district. An agency representative notifies the middle school of the placement and brings the child to school to register for attendance. The agency representative shares the name and address of the school the child previously attended, so the new school can request the school records be transferred.

Statute: § 48.64(1r)

Notification of Licensure of a Group Home

Context: When the Department of Health and Family Services licenses a group home in a school district, the agency is to notify the clerk of the school district.

Provisions for Disclosure: Although the release of this information is to be made to the clerk of the school district, the responsibility to receive this information may be delegated to one or more school district employees.

Example: The Department of Health and Family Services licenses a group home that is authorized to serve up to six female adolescents. A DHFS employee contacts the school district administration office with this information, which is passed on to the school district clerk and the affected middle school and high school.

Statute: § 48.625(2m)

Birth to 3 Early Intervention Programs—Referral of Children with Disabilities for Special Education

Context: In Wisconsin, approximately 75 percent of the children that exit county-based Birth to 3 Programs at the age of three transition into public school special education services. In order to ensure a smooth transition, federal and state laws guide the process in which the Birth to 3 Program 1) convenes a transition planning conference and 2) shares records for referral and IEP Team process. The goal of the transition process is to ensure that the school district develops and implements an Individual Education Program (IEP) by the child's third birthday. The transition planning conference must be held at least 90 days or up to six months before the child turns three years of age. If invited to the transition planning conference, the school district is required to attend the conference. From the date of the written referral, the school district has 90 days to conduct an IEP Team evaluation and offer placement. The transition planning, referral and IEP team processes are specific to each child and their family. The Department of Public Instruction Information Update Bulletins 98.09 and 99.09 discuss this process in detail.

Provisions for Disclosure: For the purposes of child find, Birth to 3 Programs notify school districts annually by sharing nonidentifiable information about the number of children being served. The Birth to 3 Program must obtain parental permission to 1) invite the school district to the transition planning conference and 2) obtain parental consent to release Birth to 3 Program reports and records to the school district. The school district is required to obtain parental consent to begin the IEP process.

Example: At least 90 days before a specific child turns three years of age, the Birth to 3 Program develops a transition plan with the parent. Based on the parent's understanding of the process and interest in referral, the tasks and timelines are identified. If the parent agrees to invite the school to a transition planning conference, the Birth to 3 Program invites the school district representative. The written referral may occur before, during, or after the transition planning conference. Once the referral is made the school district begins the IEP Team process. The special education and related services begin by the time the child turns three years of age.

Statutes and Authorities: IDEA Sec. 637(a)(8); Wis. Adm. Code Chapter HFS 90.07 and 90.10(5); § 115.77(1m)(c) and § 115.782(1)(b); DPI Information Update Bulletins 98.09 and 99.09

Confidentiality from a Law Enforcement and Court Perspective

Under Wisconsin's public records law Wis. Stats., § 19.31, there is a presumption that records created and kept by government will be made accessible to members of the public upon request. Statutory exceptions to the public records law provide confidentiality for certain categories of records or information [§ 19.36(1)]. Wisconsin's Juvenile Justice Code, Chapter 938, Stats., requires that law enforcement officers' records of juveniles are kept separate from records of adults and, generally, these records may not be open to inspection or their contents disclosed, § 938.396 (1). A similar provision applies to law enforcement records maintained under the Wisconsin Children's Code, Chapter 48, Wis. Stats., which contains statutes related to the protection of children [§ 48.396(1)].

The 1996 change in the Wisconsin Juvenile Code opened up the confidentiality of records relating to the misconduct of certain juveniles. For example, the law enforcement or court records of a 17 year old who is alleged to have violated the law, are not protected from disclosure as juvenile records because the youth is considered an adult for criminal purposes. This example also extends to youth as young as 10 years old that have been involved in certain types of alleged criminal behavior (murder, attempted murder, etc.).

The 1996 changes also eased the general prohibitions, under the Juvenile Justice Code and the Children's Code, against inspection or disclosure of law enforcement officers' records of juveniles. Currently, under § 48.396 (1) and § 938.396 (1), Stats., the "confidential exchange" of information is permitted between schools, law enforcement and social services, that seek to meet the needs of the youth or to protect the public. As a result, more generalized "sharing" of information was authorized by the juvenile code. However, as is indicated earlier, the reciprocity implied in "exchange" is not currently authorized in the statutes pertaining to school records, thus prohibiting the school from sharing information without a specific exception in the pupil records laws or by informed consent or court order.

Excerpted, in part, from *Safe Schools Legal Resource Manual*

Law Enforcement Information

Context: Wisconsin law allows law enforcement agencies to share information in records related to a juvenile with school officials where the youth attends school, specifically including:

- the use, possession or distribution of alcohol, controlled substance or a controlled substance analog;
- the illegal possession by a juvenile of a dangerous weapon as defined in § 939.22(10);
- an act for which the juvenile was taken into custody based upon a law enforcement officer's belief that the juvenile was committing or had committed a violation of any state or federal criminal law; and
- an act for which the student has been adjudged delinquent.

Provisions for Disclosure: Release of this information is subject to the policy of the local law enforcement agency. The law enforcement agency may release this information on its own initiative or at the request of the school district administrator. When the school receives information from law enforcement under § 48.396(1) or 938.396(1) or (1m), the school must notify the student and the student's parents of the receipt of this information. The school may share the information only with school district employees who have a legitimate educational interest, including safety. The school district may not use information from law enforcement as the *sole* basis for discipline, including suspension, expulsion and athletic code violation. However, the school may use the information to offer services to the student.

Example #1: A district administrator hears that a student has been arrested (outside the school district grounds) for allegedly dealing drugs. He contacts the law enforcement agency to confirm the arrest and then notifies the student's building principal, assistant principal and teachers to be on the alert for any suspicious activity.

Example #2: As a matter of policy, the local police department notifies the school district administrator of any police arrests for juvenile drinking. Each time the district administrator asks the building principal to notify the school's student assistance program about possible referrals for these students.

NOTE: In both of these examples, the school district would notify both the student and the student's parents of the receipt of this information.

Statutes: § 48.396(1), § 118.127, § 938.34(4h)(a), § 938.396(1) or (1m), § 939.22(10).

Notification of Registered Sex Offenders Moving into the Community

Context: When a person is registered with the Department of Corrections (DOC) as a sex offender, DOC is to immediately notify the police chief of the community and sheriff of the county in which the person is residing, is employed or is attending school. The police chief or sheriff may provide this information to any organization or entity statutorily entitled to request this information, including schools.

Provisions for Disclosure: In order to disclose the information, the police chief or sheriff must believe disclosure of the information is necessary to protect the public.

Example: The Department of Corrections notifies the police chief in a community that a registered 23-year old sex offender has moved into the community into an apartment across from the high school. This individual had been convicted of sexual assault of a 14-year old girl. The police department notifies the school and holds a public meeting in the neighborhood to ensure the community is aware of the potential danger.

Statute: §301.45, §301.46

Petition Alleging a Felony

Context: Wisconsin law requires the clerk of courts notify the school board of the youth's school district if a petition alleging the youth committed a felony has been filed. In addition, the nature of the crime must also be shared. [Wis. Stats. § 938.396(7)(a) and (c)]

Provisions for Disclosure: The school may share the information only with school district employees who have a legitimate educational interest, including safety. The information may not be redisclosed to anyone else. The school district may not use information from law enforcement as the *sole* basis for discipline, including suspension, expulsion and athletic code violation. However, the school may use the information to offer services to the student. If the proceeding on the petition is later closed, dismissed or otherwise terminated without a finding that the juvenile has committed a delinquent act, the school is to be notified once again.

Example: A petition has been filed alleging a youth was party to the crime of battery. The court notifies the youth's building principal, who in turn notifies school employees who have contact with the student.

Statutes: § 938.396(7)(a) and (c)

Finding of Delinquency

Context: Wisconsin law requires the clerk of courts notify the school board of the youth's school district if a juvenile has been found delinquent. In addition, the nature of the crime and the disposition imposed must be shared. If school attendance is a condition of the disposition or if the juvenile was found delinquent for a felony crime that was for the benefit of a criminal gang, the school must be notified. If the juvenile is placed in a new school district, the new school is also to be notified whether the student has previously been adjudicated delinquent by that court, the nature of any previous crimes and the dispositions. [§ 938.396(7)(am), (b), (bm), and (c)]

Provisions for Disclosure: The court clerk is required to make the notification within five days after the court order is entered. The school may share the information only with school district employees who have a legitimate educational interest, including safety. The information may not be redisclosed to anyone else. The school district may not use information from law enforcement as the *sole* basis for discipline, including suspension, expulsion and athletic code violation. However, the school may use the information to offer services to the student.

Example: A juvenile is found delinquent for being party to the crime of battery. The juvenile is ordered to attend school daily and have no contact with three other students involved in the incident. Placement at a juvenile correction facility is held in abeyance. The court notifies the youth's building principal, who in turn notifies school employees who have contact with the student.

Statutes: § 938.396(7)(am), (b), (bm), and (c)

Court Records

Context: Wisconsin law allows anyone to request the court records of any juvenile who 1) has been found delinquent for committing a serious juvenile offense as specified § 938.34(4h)(a), or 2) is alleged to have committed a crime that would be a felony if committed by an adult and has been previously found to be delinquent in the past and that finding remains of record and unreversed. Reports under § 938.295 or § 938.33, or other records that deal with sensitive personal information of the juvenile and the juvenile's family are not included [§ 938.396(2m)(a)].

Provisions for Disclosure: This information may be redisclosed to anyone.

Example: A school district believes that a student has been found delinquent of being party to the crime of first degree sexual assault. The school requests the court records of this youth because it wants to know the details of the incident, so as to be aware of any possible security concerns. The court shares the information with the youth's building principal, who in turn notifies school employees who have contact with the student.

Statutes: § 938.396(2m)(a), § 938.34(4h)(a)

Referral of Children to be Placed in Residential Care Centers (formerly Child Caring Institutions)

See *Referral of Children to be Placed in Residential Care Centers.*

Definitions

Behavioral Records

"Behavioral records" means those pupil records which include psychological tests; personality evaluations; records of conversations; any written statement relating specifically to an individual pupil's behavior; tests relating specifically to achievement or measurement of ability; the pupil's physical health records other than immunization records or lead screening records required under Wis. Stats. § 254.162, law enforcement officers' records obtained under § 48.396(1) or § 938.396(1m), Stats.; and any other pupil records that are not progress records [§ 118.125 (1) (a)].

Court

“Court” when used without further qualification, generally means the court assigned to exercise jurisdiction over a particular matter. For the purposes of this document, that could include the family court, children’s court, juvenile court, municipal court, or circuit court. The term may also refer to the judge and the court staff, i.e., court clerk, court secretary. The term “court” does not include officers of the court: prosecutors, defense attorneys, public defenders, or juvenile court intake workers unless specifically articulated by court policy.

Dangerous Weapon

Dangerous weapon means any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any electric weapon, as defined in § 941.295(4); or any other device or instrumentality which, in the manner it is used or intended to be used is calculated or likely to produce death or great bodily harm.

Directory Data

"Directory data" means pupil records that include the pupil's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, photographs, degrees and awards received, and the name of the school most recently previously attended by the pupil. These are data that may be disclosed to any person provided the proper notice and opportunity to object to release is provided [§ 118.125 (1)(b) and (2)(j)].

Education Records

The term “education records” is a term used in FERPA, a federal statute, to identify records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. In Wisconsin that would include behavioral records, directory data, progress records, pupil physical health records, and pupil records. It does not include oral statements not put in writing.

FERPA

FERPA is an acronym for the Family Educational Rights and Privacy Act of 1974, as amended, which was enacted as section 444 of the General Education Provisions Act. It is found in the U.S. Code at 20 USC 1232g. FERPA is a complex federal law that protects the privacy interests of parents and students with regard to education records.

Firearm

For the purposes of gun-free schools, federal law defines a "firearm," under 18 USC 921 (a) (3) as:

- any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
- the frame or receiver of any weapon described above;
- any firearm muffler or firearm silencer;
- any explosive, incendiary or poison gas bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, or similar device;
- any weapon which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and
- any combination of parts either designed or intended for use in converting any device into any destructive device described in the two immediately preceding examples, and from which a destructive device may be readily assembled.

Health Care Provider

Health care providers are defined under § 146.81, Stats. and include, but are not limited to, the following licensed or certified personnel: nurse, dentist, physician, physician assistant, physical therapist, occupational therapist or assistant, dietitian, psychologist, social worker, marriage and family therapist or professional counselor, speech-language pathologist, audiologist, a partnership or corporation of health care providers.

Human Services

Social Services has been used interchangeably to refer to county departments of social services and human services as defined in § 46.215, § 46.22 and § 46.23, Stats. unless the context requires otherwise.

Informed Consent

People must give their informed consent prior to any significant intrusion of their person or privacy. The three key elements of informed consent are that it must be knowing, competent and voluntary. The person seeking consent must make a good faith effort to disclose enough information to the person from whom consent is sought that the individual can make an informed choice [§ 146.81(2)].

Mandated Reporters

Mandated reporters are those persons who are required to report suspected child abuse or neglect if they have reason to believe that a child seen in the course of their professional duties has been abused or neglected or that a child has been threatened with abuse or neglect. The statute lists the following persons as mandated reporters: a physician, coroner, medical examiner, nurse, dentist, chiropractor, optometrist, acupuncturist, other medical or mental health professional, social worker, marriage and family therapist, professional counselor, public assistance worker, including a financial and employment planner, school teacher, administrator or counselor, mediator, child care worker in a day care center or child caring institution, day care provider, alcohol or other drug abuse counselor, member of the treatment staff employed under contract by a county department, physical therapist, occupational therapist, dietitian, speech-language pathologist, audiologist, emergency medical technician or police or law enforcement officer [§ 48.981(2)].

Patient Health Care Records

“Patient health-care records” are those records relating to the health of a student that are authored by or under the supervision of a health care provider, as defined under § 146.81(1), Stats., except for records containing basic health information included in the definition of pupil physical health records.

Personal Notes

“Personal notes” are those records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the records.

Progress Records

"Progress records" means those pupil records which include the pupil's grades; a statement of the courses the pupil has taken; the pupil's attendance record; the pupil's immunization records; any lead screening records required under § 254.162; and the records of the pupil's extracurricular activities [§ 118.125 (1)(c)].

Public School

Public schools are defined as the elementary and high schools supported by public taxation. The phrase includes charter schools and Milwaukee Public Schools “contract schools.” The phase generally does not apply to the technical college or UW Systems, but certain K-12 pupil rights may follow them under youth options or other shared programs [§ 115.01(1)].

Pupil Physical Health Records

"Pupil physical health records" are pupil records that include basic health information about a child. These records are subject to the requirements governing records classified as "behavioral records." Pupil physical health records include immunization records; an emergency medical card;

a log of first aid and medicine administered to the pupil; an athletic permit card; a record concerning the pupil's ability to participate in an education program; any lead screening records; the results of any routine screening test, such as for hearing, vision, or scoliosis, and any follow-up to such test; and any other basic health information, as determined by the state superintendent. Such basic health information includes a log of services, such as physical or occupational therapy, provided under the authority of the school district, but does not include records that contain such information as diagnoses, opinions, and judgments concerning the child's health [§ 118.125 (1)(cm)].

Pupil Records

All records directly related to a student and maintained by the school district are pupil records. Pupil records include records maintained in any way including, but not limited to, computer storage media, video and audio tape, film, microfilm, and microfiche. Records maintained for personal use by a teacher and others required to hold a license under § 115.28(7) and not available to others, and records available only to persons involved in the psychological treatment of a student are not pupil records [§ 118.125 (1)(d)].

Resources

Child Protective Service Investigation Standards. Wisconsin Department of Health and Family Services, Division of Children and Family Services. Phone: (608) 266-3036.

Confidentiality and Collaboration: Information Sharing in Interagency Efforts. A Joint Publication of Joining Forces American Public Welfare Association Center for Law and Social Policy Council of Chief State School Officers and Education Commission of the States. January 1992. Phone: (303) 299-3692. Document # AR-92-1.

Guidelines for Protecting Confidential Health Information. American School Health Association (ASHS). Published 2000. Contact ASHA at 7263 State Route 43, PO Box 708, Kent, OH 44240.

Information Update Bulletins from the Department of Public Instruction can be obtained electronically at www.dpi.state.wi.us/dpi/dlsea/een/bulindex.html or (608) 266-1781.

"Laws Relating to the Exchange of Information Between Schools and Law Enforcement Agencies, Courts, and Social Services Agencies." Published January 14, 1999. *Information Memorandum 99-2*. Contact the Wisconsin Legislative Council Staff at (608) 266-1304.

"Police Interrogations in the School: What Should Be Done?" *WASB Legal Services Membership*. Wisconsin Association of School Boards (WASB). Published Spring 1991. Contact WASB at (608) 257-2622

Protecting the Privacy of Student Records: Guidelines for Education Agencies. National Center for Education Statistics. June 1997. Document # NCES 97-527.

Reporting Requirements for Sexually Active Adolescents. Wisconsin Department of Public Instruction. April 1999. Available at http://www.dpi.state.wi.us/dpi/dlsea/sspw/rrfsaa.html or contact the Student Services/Prevention and Wellness Team at (608) 266-8960.

Safe Schools Legal Resource Manual. Wisconsin Department of Justice, 2002. Available at www.doj.state.wi.us/ss_manual2002/ or (608) 266-1221.

Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs. Program Report. December 1997, U.S. Departments of Justice and Education. Phone: (800) 638-8736. Document # NCJ 163705. Electronic copies are available at www.ncjrs.org/txtfiles/163.705.txt. Print copies may be ordered from the National Criminal Justice Reference Service (NCJRS) at (800) 851-3420.

Student Records & Confidentiality. Wisconsin Department of Public Instruction. August 2004. Available at http://www.dpi.state.wi.us/dpi/dlsea/sspw/rrfsaa.html or contact the Student Services/Prevention and Wellness Team at (608) 266-8960.

"Working Together for Student Safety." Volume 16, No. 8, March 1999 of *The Focus.* Contact the Wisconsin Association of School Boards at (608) 257-2622.

How to Access Referenced Statutes

Family Educational Rights and Privacy Act (FERPA)
Title 34—Education
99—Family Educational Rights and Privacy

www.access.gpo.gov/nara/cfr/waisidx_98/34cfr99_98.html

Wisconsin Statutes

www.legis.state.wi.us/